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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,702	12/21/2000	Nabil Enrique Salman	8384P	9701

27752 7590 05/20/2004

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EXAMINER

TRUONG, THANH K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/745,702

Applicant(s)

SALMAN ET AL.

Examiner

Thanh K Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to applicant's amendment, received on January 30, 2004.
2. Applicant's cancellation of claims 2-5 and 11 is acknowledged.

### ***Drawings***

3. The drawings were received on January 30, 2004. These drawings are figures 1 and 3.
4. The drawings are objected to because it is unclear which of the drawing, figure 1 or figure 3, indicating the opening has the oval or elliptical shape; and the Brief Description Of The Drawing in the specification also need to be amended to clearly indicates that the opening is an oval or elliptical shape, because figures 1 and 3 can be interpreting as the perspective view of a device that has a circular opening and not an oval or elliptical. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The amendment filed January 30, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the paragraph beginning on page 15, lines 12-16, "To facilitate the convenient handling of ... receiver element positioned on a wall, tabletop, etc.", and figure 1. The new added information

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in the amendment introduces the handle, which is not supported or disclosed in the original specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1 and 6-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5-8, 11, 13-16 & 18 of copending Application No. 10/010,391. Although the conflicting claims are not identical, they are not patentably distinct from each other. A side-by-side comparison of the two claimed inventions reveals a substantially same scope of invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Although, the Applicant has filed a terminal disclaimer for the copending Application No. 10/010,391, the Double Patenting rejection is repeated in this office

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action, because a separate terminal disclaimer for this Application (09/745,702) is required to overcome the Double Patenting rejection. According to the MPEP 804.02 "If an appropriate double patenting rejection of the nonstatutory type is made in two or more pending applications, an appropriate terminal disclaimer must be filed in each application".

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claim 9 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The handle claims in claim 9 is not supported in the original disclosure.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claims 1 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richards et al. (4,869,049) in view of Hamilton et al (5,662,758) and W. E. Meissner (3,111,796).

Richards discloses an apparatus comprising: a body formed by an inner core having an inlet opening and an outlet opening and a passageway there between (figures 1, 4 & 5); a casing 1 comprising a surrounding casing wall, a storage space to retain a length of the flexible tubular sheet 2 within the storage space in a layered stack; the tubular sheet is gathered and closed at each end to form a closed packaged article 35 (figure 1); a means 61 comprises a slot for separating the closed packaged article; and the cutting blade 64 (figure 6).

Richards further discloses the article to be packaged is a waste-filled disposable absorbent article (column 2, lines 42-44); a cap 31 and a handle 68.

Richards discloses the claimed invention, but does not expressively disclose that the tubular sheet comprises the adhesive material.

W. E. Meissner discloses, in an invention for closing and sealing a container, that: "for closing and sealing a collapsible container by rupturing a bubble of tacky film-forming material at least within the opening end of the container as that portion of the container is urged into collapsed position" (column 1, lines 31-35). Figure 5 further depicting the closing and sealing of a flexible bag by twisting the bag at the area 53. During this twisting operation, the bubble ruptured and coated the inner wall of the bag with adhesive (column 5, lines 48-55).

Hamilton discloses a flexible film having pressure sensitive adhesive protected from inadvertent adherence (abstract); the flexible film having a recessed pressure sensitive adhesive and collapsible protrusions (three-dimensional film) which serve as stand-off to prevent premature sticking to wide variety of rigid and resilient target surfaces, wherein the collapsible protrusions are small and closely spaced for releasable sealing of the composite material to such surfaces or even to itself (column 3, lines 20-26).

W. E. Meissner's teaching provides a motivation for the practitioner in the art to find a flexible material to use as a bag in which the inner surface is coated with adhesive, and when pressure is applied such as twisting, the adhesive material ensures the sealing of the closure of the bag.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Richards' tubular sheet by applying the flexible film with adhesive as taught by Hamilton providing an effective closing and sealing of the waste-filled article in which the flexible material having pressure sensitive adhesive that is protected from inadvertent adherence to other surfaces.

Regarding to claim 10, the modified Richards discloses the claimed invention, but does not expressly disclose that the shape of the outlet opening and a portion of the passageway are oval.

It would have been an obvious matter of design choice to make the outlet opening and a portion of the passageway in an oval shape.

Since Applicant's disclosure submitted that the shape of either or both the inlet and outlet opening can be circular, or oval (page 4, lines 14-16), therefore, the apparatus of the present invention would perform equally well with the outlet opening of a circular shape. Thus, the oval shape outlet opening would have been an obvious variation of the present invention.

### ***Response to Arguments***

13. Applicant's arguments with respect to claims 1 and 6-10 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

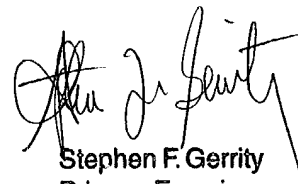
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tk  
May 14, 2004.



Stephen F. Gerrity  
Primary Examiner